

EDU #328-02  
C #211-03  
SB # 20-03

IN THE MATTER OF THE DIVISION OF :  
ASSETS AND LIABILITIES AMONG THE : STATE BOARD OF EDUCATION  
CONSTITUENT DISTRICTS OF LOWER : DECISION ON MOTION  
CAMDEN COUNTY REGIONAL HIGH :  
SCHOOL DISTRICT NO. 1, :  
CAMDEN COUNTY. :

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Decided by the Commissioner of Education, May 2, 2003

Decision on motion by the Commissioner of Education, July 8, 2003

For the Respondent-Appellant Lindenwold Borough Board of Education,  
Jacob & Chiarello, LLC (Frederick A. Jacob, Esq., of Counsel)

For the Respondent-Appellant Winslow Township, Weber, Goldstein,  
Greenberg & Gallagher, LLP (Richard K. Tavani, Esq., of Counsel)

For the Respondent-Appellant Winslow Township Board of Education,  
David M. Serlin, Esq.

For the Petitioner-Cross/Appellant Waterford Township and the  
Respondent-Respondent Waterford Township Board of Education,  
Cooper, Levenson, April, Niedelman & Wagenheim, P.A. (John R.  
Armstrong, Esq., of Counsel)

For the Respondent-Respondent Camden County Superintendent of  
Schools, Allison C. Eck, Deputy Attorney General (Peter C. Harvey,  
Attorney General of New Jersey)

For the Respondent-Respondent Chesilhurst Borough, Harvey C.  
Johnson, Esq.

For the Respondent-Respondent Chesilhurst Borough Board of Education,  
Emmett E. Primas, Jr., Esq

For the Respondents-Respondents Clementon Borough and Berlin  
Township Boards of Education, Capehart & Scatchard, P.A.  
(Robert A. Muccilli, Esq., of Counsel)

For the Respondent-Respondent Pine Hill Borough Board of Education,  
Sahli & Padovani (Anthony I. Padovani, Esq., of Counsel)

In October 2001, the Township of Waterford filed a petition with the Commissioner of Education challenging the Camden County Superintendent's report dated June 30, 2001, in which he set forth the distribution of the assets and liabilities of the Lower Camden County Regional High School District (hereinafter "District" or "Regional District") following the Regional District's dissolution. In his report, the County Superintendent allocated a portion of the value of the Regional District's liquid assets to the constituent districts which did not have a building in order to equalize the distribution.<sup>1</sup> Specifically, he indicated that the liquid assets should be distributed to all seven constituent districts in proportion to the amount each had contributed to the overall tax levy for the Regional District as of the 2000-01 school year.

In its petition, the Township of Waterford sought to have the liquid asset distribution formula devised by the County Superintendent modified so that all of the Regional District's liquid assets were distributed to the districts which did not have buildings. The respondents countered that any redistribution of the liquid assets was contrary to statute, the Supreme Court's decision in In re Dist. of Liquid Assets, 168 N.J.

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<sup>1</sup> The Regional District consisted of Berlin, Chesilhurst, Clementon, Lindenwold, Pine Hill, Waterford and Winslow. The District's buildings were located in Lindenwold, Pine Hill and Winslow.

1 (2001) ("Liquid Assets"),<sup>2</sup> and an alleged informal but unexecuted agreement between the constituent districts.

In a Prehearing Order issued on June 11, 2002, the Administrative Law Judge ("ALJ") related that the parties had agreed to have the matter determined on the basis of cross-motions for summary decision. The ALJ gave the parties until January 30, 2003 to request an evidentiary hearing. Thereafter, Waterford filed a motion for summary decision.

In a decision issued on March 6, 2003, the ALJ recommended granting Waterford's motion, concluding that deviation from the distribution formula in the County Superintendent's report was necessary in order to correct inequities in the treatment of those districts that had buildings and those districts which did not. In so doing, the ALJ found that the non-building districts had been treated disproportionately and inequitably by the County Superintendent when compared to the building districts. The ALJ further found that there had not been a binding agreement between the parties with regard to the distribution of liquid assets.<sup>3</sup> He recommended granting the motion for summary decision, concluding that redistribution of the liquid assets to Waterford was appropriate. In making this recommendation, the ALJ concluded that the liquid assets should not be distributed to the other non-building districts, i.e., Berlin, Chesilhurst and Clementon, since they had entered into sending/receiving relationships with building districts and therefore would benefit from the building districts' liquid assets.

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<sup>2</sup> That case involved the dissolution of Union County Regional High School District No. 1,

<sup>3</sup> Berlin and Clementon argued that the constituent districts had reached an informal agreement to receive their entitlement of the liquid assets rather than the hard assets themselves. Initial Decision, slip op. at 12.

On May 2, 2003, the Commissioner agreed that deviation from the asset distribution ordered in the County Superintendent's report was justified, but he modified the ALJ's recommendation. The Commissioner found that the most equitable allocation of the Regional District's assets would be to divide the total liquid assets among the four non-building districts in proportion to the percentages of school taxes that each of those districts paid to the Regional District, without regard to the contribution of the building districts. In doing so, the Commissioner rejected the ALJ's conclusion that involvement in a sending-receiving relationship constituted a quantifiable asset that must be factored into an equitable distribution scheme.

The Lindenwold Board, Winslow Township and the Winslow Township Board filed an appeal to the State Board. Waterford filed a cross-appeal.

On June 23, 2003, the Lindenwold Board filed the instant motion seeking to reopen the proceedings in this matter so as to take testimony in the Office of Administrative Law on the issues of: "1) Whether or not the seven Boards of Education had agreed to a division of the non-liquid assets before the County Superintendent's report was issued; 2) Whether or not a send/receive relationship constitutes a quantifiable 'asset'; and 3) To afford the County Superintendent the opportunity to defend the report that he issued so that the ALJ and the Commissioner have a basis upon which to accept or reject it."

N.J.A.C. 1:1-18.5(b) authorizes an agency head to reopen a hearing after an initial decision has been filed. In Board of Education of Carlstadt-East Rutherford Regional High School District v. New Jersey State Interscholastic Athletic Association, decided by the Commissioner of Education, 94 N.J.A.R.2d (EDU) 563, the

Commissioner adopted the ALJ's findings and conclusions, including her recommendation to deny the respondent's motion to reopen the record. In so doing, the ALJ reviewed the pertinent case law, observing that:

Reopening a record is permitted in Superior Court to avoid a "manifest denial of justice," O'Neil v. Bilotta, 18 N.J. Super. 82, 90 (App. Div. 1952), aff'd 10 N.J. 308 (1952) (per curiam), and to legally establish a fact that had been insufficiently proved, Rinaldi v. Rinaldi, 94 N.J. Eq. 14, 22 (Ch. 1922); Benfrey Dress Co., Inc. v. Irving Gale, Inc. 13 N.J. Mis. 212 (S.Ct. 1935). Denial of a motion to reopen the record has been held improper where the omitted evidence tended to prove that the judge's legal conclusion was erroneous. Handleman v. Cox, 74 N.J. Super. 316, 332 (App. Div. 1962), aff'd 39 N.J. 95 (1963).

Other administrative cases have found the inverse to be true also: when the evidence sought to be admitted would have no impact upon the outcome of the case, it is inappropriate to reopen the record to admit such evidence. See, I/M/O Special Election Held in Tp. of Millburn, 93 N.J.A.R.2d (Vol. 4A) 273, 279 (Dep't of Ed.) ("No prima facie showing has been made, even today, that the desired testimony would have impact"); Cherry v. Monmouth Cty. Personnel Dept., 92 N.J.A.R.2d (Vol. 2) 438, 439 (Merit System Board), (proffered additional documentation was found unnecessary to render a proper decision in the matter, therefore motion to reopen was denied)..

Id. at 572.

After a review of the papers filed, we deny the Lindenwold Board's motion.

We reiterate that this matter was decided on a summary basis by the ALJ and the Commissioner as a result of the parties' concurrence that a hearing was not required in order to determine whether to uphold the County Superintendent's plan for distribution of the Regional District's liquid assets. It is also clear that the ALJ provided the parties, including the Lindenwold Board, with the opportunity to request an evidentiary hearing. Prehearing Order, at 5. Upon review of the moving papers and responses to Waterford

Township's motion for summary decision, the ALJ specifically found, inter alia, that there had not been a binding agreement between the parties with regard to the distribution of the liquid assets. We conclude that the Lindenwold Board, apparently aggrieved by that finding, has provided no basis for reopening the matter at this late juncture so as to now permit it to present testimony on that issue.

Nor, we stress, could the existence of such an agreement supersede the overriding goal of the statutory scheme, which, as found by the Supreme Court in Liquid Assets, supra, is to distribute equitably a regional district's assets and liabilities following dissolution. The Court in that case held that, given such purpose, the statutory framework permitted deviation from the asset distribution formula set forth in N.J.S.A. 18A:8-24. Under the circumstances of that particular case, the Court was persuaded that strict application of that scheme was unwarranted, particularly where the parties had entered into an alternative liquid asset distribution formula that represented a more equitable asset allocation. The Court asserted that "[t]o hold otherwise would be to ignore the clear overriding purpose of the statutory framework in favor of ritualistic application of statutory language divorced from context." Liquid Assets, supra, at 17.

In this case, the Commissioner expressly concluded that the most equitable allocation of the Regional District's liquid assets would be to divide them among the four non-building districts in proportion to the percentages of school taxes that each of those districts paid to the Regional District, without regard to the contributions of the building districts. In so doing, the Commissioner emphasized that he did not view any agreement between the constituent districts "as determinative in the Court's analysis" in

Liquid Assets. Commissioner's Decision, slip op. at 24.<sup>4</sup> We agree. We observe, in addition, that the Lindenwold Board does not argue in its motion to reopen that the alleged agreement between the constituent districts represented the most equitable method of distributing the Regional District's liquid assets.

Similarly, we find that the Lindenwold Board has not provided any basis for reopening the record in order to take testimony on whether a sending/receiving relationship constitutes a quantifiable asset and to provide the Camden County Superintendent with the opportunity to defend his report. We add only that the County Superintendent has been a party throughout these proceedings, represented by a Deputy Attorney General, and he fully participated in the proceedings before the ALJ and the Commissioner.

We therefore deny the Lindenwold Board's motion to reopen.

September 3, 2003

Date of mailing \_\_\_\_\_

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<sup>4</sup> The Commissioner, quoting Liquid Assets, added that he found no "policy justification for insisting on distributing the liquid assets to each municipality, and thereby exacerbating the overall disproportion of the municipalities' asset shares." Commissioner's Decision, slip op. at 24.